TABLE OF CONTENTS

	Page
Relevant Docket Entries	1
RELEVANT PLEADINGS, CHARGE, FINDINGS OR OPINION	
Affidavit of Thomas Martin	3
Warrant for Dennis Coates	4
Affidavit of Pat'n Hochstrasser	5
Warrant for James Hastings	6
Opinion of Supreme Court of Ohio	7
JUDGMENT, ORDER OR DECISION IN QUESTION	
Final Order, Supreme Court of Ohio	15
OTHER PARTS OF THE RECORD	
Bill of Exceptions — Coates	17
Bill of Exceptions — Hastings	25

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1969

No. 1370

DENNIS COATES, ET AL.,

Appellants,

v.

CITY OF CINCINNATI,

Appellees.

APPEAL FROM THE SUPREME COURT OF OHIO

RELEVANT DOCKET ENTRIES

Hamilton County Municipal Court

(Cincinnati Municipal Court)

12- 2-67	(Coates) Case called for trial — continued
3-29-68	(Coates) Finding of guilty
4-12-68	(Hastings, Saylor, Adams and Wyner) Cases called for trial — continued
4-23-68	(Hastings, Saylor, Adams and Wyner) Finding of guilty
9-20-68	(Coates, Hastings, Saylor, Adams and Wyner) New Trial Motions overruled
9-30-68	(All Defendants) Notices of Appeal filed

Court of Appeals

First Appellate District of Ohio

11-13-69	Assignments of Error and Appellants' Brief filed
12- 9-68	Brief of Appellee filed
2- 4-69	Convictions affirmed
2-11-69	Notice of Appeal filed
4-30-69	Order to Certify Record to Supreme Court of Ohio

The Supreme Court of Ohio

4-30-69	Motion to Certify Record allowed
9-24-69	Hearing on the merits
1-28-70	Convictions affirmed
2-16-70	Notice of Appeal filed

RELEVANT PLEADING, CHARGE, FINDING OR OPINION

Arrest Affidavit as to Dennis Coates, 12-8-67

AFFIDAVIT

The Cincinnati Municipal Court

STATE OF OHIO)
HAMILTON COUNTY) SS.
CITY OF CINCINNATI)

Thomas J. Martin, being first duly cautioned and sworn, deposeth and said that one DENNIS COATES on or about the ..... day of DEC 7 1967, A.D. 19 .... at and in the City of Cincinnati, County of Hamilton, and State of Ohio, did Unlawfully Loiter on the sidewalk at 500 Main with 6 other persons and there did conduct himself in a manner annoying to persons passing by, Contrary to and in violation of Section 901-L6 of the code of Ordinances of the City of Cincinnati.

Sworn to and subscribed before me and filed in this court this .... day of DEC 8 1967 A.D., 19....

/s/ Thomas J. Martin

ROBERT D. JENNINGS
Clerk of the Cincinnati Municipal Court

By /s/ J. V. Huber
Deputy Clerk

5

Warrant for arrest — Coates, 12-8-67

WARRANT

The Cincinnati Municipal Court

STATE OF OHIO)
HAMILTON COUNTY) SS.
CITY OF CINCINNATI)

To The Police Chief of the City of Cincinnati, Greetings:

You are commanded to take the body of DENNIS COATES, P. O. Box 382 Harper Washington, and have him before the Honorable Judge of the Cincinnati Municipal Court forthwith to answer unto THE CITY OF CINCINNATI charged with LOITERING, Section 901-L6 Code of Ordinances as per affidavit hereto attached and of this writ make legal service and due return.

Given under my hand and seal this .... day of DEC 8 1967 A.D. 19.....

Name and address of affiant:

ROBERT D. JENNINGS,
Clerk of the Cincinnati Municipal Court

By /s/ J. V. Huber
Deputy Clerk

Arrest Affidavit as to James Hastings, 4-11-68
(Saylor, Adams and Wyner proceedings identical)

AFFIDAVIT

Hamilton County Municipal Court

STATE OF OHIO)
HAMILTON COUNTY) SS.
CITY OF CINCINNATI)

Pat'n Hochstrasser being first duly cautioned and sworn, deposes and says that James Hastings being one of a group of more than two persons assembled on the sidewalk on or about April 11, 1968, at and in the City of Cincinnati, Hamilton County and State of Ohio, did unlawfully conduct himself in a manner annoying to persons passing by contrary to and in violation of Section 901-L6 of the Code of Ordinances of the City of Cincinnati.

Sworn to, subscribed before me, and filed in this Court this April 11, 1968

/s/ Pat'n Hochstrasser

ROBERT D. JENNINGS, CLERK
Clerk of the Hamilton County Municipal Court

By /s/ Peter Busse
Deputy Clerk

Warrant for arrest — Hastings, 4-11-68
(Saylor, Adams and Wyner proceedings identical)

WARRANT

HAMILTON COUNTY MUNICIPAL COURT

STATE OF OHIO)
HAMILTON COUNTY) SS.
CITY OF CINCINNATI)

To the Police Chief of the City of Cincinnati, Greetings:

You are commanded to take the body of JAMES HASTINGS and have him before the Honorable Judge of the Hamilton County Municipal Court forthwith to answer unto the City of Cincinnati, charged with the violation of Section 901-L6 of the Code of Ordinances of the City of Cincinnati, and of this writ make legal service and due return. Affidavit on the reverse side of this warrant is, by reference, made a part hereof.

Given under my hand and seal this April 11, 1968.

ROBERT D. JENNINGS
Clerk of the Hamilton County Municipal Court

By /s/ Peter Busse
Deputy Clerk

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[66] CITY OF CINCINNATI, APPELLEE, *v.* COATES, APPELLANT.
CITY OF CINCINNATI, APPELLEE, *v.* HASTINGS, APPELLANT.
CITY OF CINCINNATI, APPELLEE, *v.* SAYLOR, APPELLANT.
CITY OF CINCINNATI, APPELLEE, *v.* ADAMS, APPELLANT.
CITY OF CINCINNATI, APPELLEE, *v.* WYNER, APPELLANT.

[Cite as Cincinnati v. Coates, 21 Ohio St. 2d 66.]

Criminal law—Ordinance prohibiting assemblage on sidewalks annoying persons passing by—Not vague or uncertain—Sufficiency of affidavit charging offense.

A city ordinance making it "unlawful for three or more persons to assemble * * * on * * * sidewalks * * * and there conduct themselves in a manner annoying to persons passing by" is not vague or uncertain but is, on its face, sufficiently clear to inform a person of common intelligence of the nature of the acts prohibited by the ordinance.

[67] (Nos. 69-116, 69-117, 69-118, 69-119 and 69-120—Decided January 28, 1970.)

APPEALS from the Court of Appeals for Hamilton County.

Mr. William A. McClain, city solicitor, *Mr. Ralph E. Cors* and *Mr. A. David Nichols*, for appellee.

Messrs. Beckman, Lavercombe, Fox & Weil and *Mr. Bernard C. Fox*, for appellants.

CORRIGAN, J. We are without the advantage of a bill of exceptions in these appeals from convictions in the Hamilton County Municipal Court for violating Section 901-L6 of the Cincinnati Code of Ordinances. The Court

of Appeals for Hamilton County affirmed the convictions, and the causes are before this court pursuant to the allowance of motions to certify the record.

The ordinance in question provides:

"It shall be unlawful for three or more persons to assemble, except at a public meeting of citizens, on any of the sidewalks, street corners, vacant lots, or mouths of alleys, and there conduct themselves in a manner annoying to persons passing by, or occupants of adjacent buildings. Whoever violates any of the provisions of this section shall be fined not exceeding fifty dollars ($50.00), or be imprisoned not less than one (1) nor more than thirty (30) days or both."

With one exception, the separate affidavits upon which the warrants of arrest were based charged that each defendant "being one of a group of more than two persons assembled on the sidewalk on or about April 11, 1968, at and in the city of Cincinnati, Hamilton County and state of Ohio, did unlawfully conduct himself in a manner annoying to persons passing by contrary to and in violation of Section 901-L6 of the Code of Ordinances of the City of Cincinnati."

In case No. 69-116, the affidavit charged defendant "on Dec. 7, 1967, did unlawfully loiter on the sidewalk at [68] 500 Main with 6 other persons and there did conduct himself in a manner annoying to persons passing by * * *."

We are urged to declare this ordinance to be in violation of the First and Fourteenth Amendments to the Constitution of the United States and Section 3, Article I of the Ohio Constitution, for the reasons that it is vague and imprecise as to what conduct is proscribed. A claim is also made that the affidavits do not contain all the material elements to charge an offense under said ordinance.

The First Amendment to the U. S. Constitution provides, in part:

"Congress shall make no law * * * abridging * * * the right of the people to peaceably assemble * * *."

This right of assembly, granted by both state and federal constitutions, contemplates that it be asserted and enjoyed in a peaceable manner. The right delineated certainly does not include the contravening of other rights of other persons. The affidavits under scrutiny here charge assembly and a course of conduct "* * * annoying to persons passing by * * *." Without a bill of exceptions we do not know what the conduct was which was considered annoying.

Could it have been the interruping or interfering with the free, unimpeded passage, the use of and enjoyment of the public sidewalk or street by other persons?

Could it have been an intrusion upon the privacy of persons using the public sidewalk or street by accosting and seeking to deliver to such person written or printed messages, papers, pamphlets, cards or books?

Could it have been an intrusion upon the privacy of persons to impart an oral message by blocking or otherwise seeking to detain persons in the free use of the public sidewalks or streets?

On the state of the record before us, we will go to our rewards without knowing.

[69] As to the contention that this ordinance is imprecise, vague and indefinite, we do not agree. Certainly, crime must be defined with certainty and definiteness, which requirements are elements of due process. Persons charged with violations of penal statutes or ordinances are not required to speculate as to the meaning of such legislation. If the provisions of an ordinance are so vague that persons of common intelligence must guess as to their meaning, then an essential of due process is lacking. *Connally* v. *General Construction Co.*, 269 U. S. 385.

The ordinance prohibits, *inter alia*, "conduct * * * annoying to persons passing by." The word "annoying" is a widely used and well understood word; it is not necessary to guess its meaning. "Annoying" is the present participle of the transitive verb "annoy" which means to trouble, to vex, to impede, to incommode, to provoke, to harass or to irritate.

We conclude, as did the Supreme Court of the United States in *Cameron* v. *Johnson*, 390 U. S. 611, 616, in which the issue of the vagueness of a statute was presented, that the ordinance "clearly and precisely delineates its reach in words of common understanding. It is a 'precise and narrowly drawn regulatory statute [ordinance] evincing a legislative judgment that certain specific conduct be * * * proscribed."

Although we conclude that the meaning of the words used in the ordinance is clear and that the standard of conduct which it specifies is not dependent upon each complainant's sensitivity, we are unable to apply it to the facts in this case because of the absence of facts in the record before us.

We find no merit in defendants' claim that the affidavits herein do not contain all the material elements to charge an offense under this ordinance.

The judgments of the Court of Appeals are affirmed.

Judgments affirmed.

TAFT, C. J., MATTHIAS and SCHNEIDER, JJ., concur.
O'NEILL, HERBERT and DUNCAN, JJ., dissent.

[70] HERBERT, J., dissenting. There being no bill of exceptions in these cases, the sole and proper question raised by these appeals is the constitutionality, on its face, of Section 901-L6 of the Cincinnati Code of Ordinances. It

appears to be well established that the question of the constitutionality of a statute or ordinance is judicially cognizable under these circumstances. *Belden* v. *Union Central Life Ins. Co.* (1944), 143 Ohio St. 329, 55 N. E. 2d 629; *Blacker* v. *Wiethe* (1968), 16 Ohio St. 2d 65, 242 N. E. 2d 655. *Cf. Castle* v. *Mason* (1915), 91 Ohio St. 296, 110 N. E. 463; *State ex rel. Herbert,* v. *Ferguson* (1944), 142 Ohio St. 496, 52 N. E. 2d 980; *State ex rel. Speeth,* v. *Carney* (1955), 163 Ohio St. 159, 126 N. E. 2d 449.

Defendants were convicted of violating Section 901-L6 of the Cincinnati Code of Ordinances, which provides:

"It shall be unlawful for three or more persons to assemble, *except at a public meeting of citizens,* on any of the sidewalks, street corners, vacant lots, or mouths of alleys, and there conduct themselves in a manner annoying to persons passing by, or occupants of adjacent buildings. Whoever violates any of the provisions of this section shall be fined not exceeding fifty dollars ($50.00) or be imprisoned not less than one (1) nor more than thirty (30) days or both." (Emphasis added).

Since the syllabus announced by the majority does not contain all of the pertinent language of the ordinance under consideration, I am respectfully constrained to characterize it as dicta. Therefore, this dissent should not be construed as necessarily encompassing that syllabus.

The defendants claim that the ordinance violates the Constitution of the United States in that it is vague, indefinite and imprecise as to what conduct is prohibited.

The United States Supreme Court, in the case of *United States* v. *Petrillo* (1947), 332 U. S. 1, 91 L. Ed. 1877, stated that while the Constitution of the United States does not require impossible standards of certainty in statutes defining crimes, the test is whether or not the law is so designed that persons of ordinary intelligence, who would

be law abiding, can determine with reasonable precision [71] what conduct it is their duty to avoid. *Connally* v. *General Construction Co.* (1926), 269 U. S. 385, 70 L. Ed. 322; *Cramp* v. *Board of Public Instruction* (1961), 368 U. S. 278, 7 L. Ed. 2d 285; *Winters* v. *New York* (1948), 333 U. S. 507, 92 L. Ed. 840. The rule is also well settled that penal laws must be strictly construed and are to be interpreted strictly against the state and liberally in favor of the accused. See *Mentor* v. *Giordano* (1967), 9 Ohio St. 2d 140, 224 N. E. 2d 343; *State* v. *Conley* (1947), 147 Ohio St. 351, 71 N. E. 2d 275; *State* v. *Meyers* (1897), 56 Ohio St. 340, 47 N. E. 138; *Turner* v. *State* (1853), 1 Ohio St. 422; *Hirn* v. *State* (1852), 1 Ohio St. 15.

Reading the instant ordinance in accordance with those rules of construction, and even assuming that what will constitute "annoying" conduct is sufficiently definite so as to be reasonably understood by all men who would be law abiding citizens, it is apparent that conduct which, in fact, is "annoying," is not unlawful if it is conduct at a "public meeting of citizen." Thus, the threshold question before us should be whether the ordinance is sufficiently definite and precise to inform a group of three or more citizens that their particular gathering is or is not such a "meeting" and, hence, is or is not excepted from the operation of the ordinance.

There appears to be little doubt that the language, "except at a public meeting of citizens," was written into the ordinance to offset potential claims that the ordinance affronted the constitutional right of peaceful assembly. The United States Supreme Court has spoken often in this area and has declared that stricter standards of permissible statutory vagueness should be applied to any statute or ordinance which has a potentially inhibiting effect upon rights guaranteed by the First Amendment to the Con-

stitution of the United States. *Smith* v. *California* (1959), 361 U. S. 147, 4 L. Ed. 2d 205; *Cramp* v. *Board of Public Instruction, supra* (368 U. S. 278); *Winters* v. *New York, supra* (333 U. S. 507); *Thornhill* v. *Alabama,* (1940), 310 U. S. 88, 84 L. Ed. 1093; *Scull* v. *Virginia, ex rel. Committee on Law Reform and Racial Activities* (1959), 359 U. S. 344, [72] 3 L. Ed. 2d 865; *Stromberg* v. *California* (1931), 283 U. S. 359, 75 L. Ed. 1117; *Wright* v. *Georgia* (1963), 373 U. S. 284, 10 L. Ed. 2d 349. In those cases, the United States Supreme Court was concerned with "the rule that a generally worded statute which is construed to punish conduct which cannot constitutionally be punished is unconstitutionally vague to the extent that it fails to give adequate warning of the boundary between the constitutionally permissible and the constitutionally impermissible applications of the statute." *Wright* v. *Georgia, supra,* 292.

Even if it is assumed that conduct which is reasonably calculated to be "annoying" is well known to reasonable men who would be law abiding citizens, the ordinance nevertheless fails to define the boundary between that assemblage which will constitute a "public meeting of citizens" and that which will not be considered such a meeting. For example, do only groups which have licenses constitute a public meeting? Must some form of notice be given before a meeting may be considered a public meeting? Who may convene a public meeting? Is a public meeting one held only in a public place? Must a meeting be held during certain hours in order to be "public"? May a public meeting be called only for certain purposes? Is it clear that an assemblage of three or more citizens on a public sidewalk can not constitute a public meeting of those citizens? In short, although the ordinance clearly excepts "annoying" behavior "at a public meeting

of citizens" there is no indication as to what conduct was included in the very words which announce that exception.

In my opinion, where an ordinance inflicts a criminal penalty for certain conduct, but excepts such conduct from its operation under certain circumstances, both the proscribed conduct and the excepting circumstances must be designated with sufficient precision to meet constitutional requirements regarding vagueness and uncertainty. The failure of the ordinance under consideration to meet this test renders it unconstitutional on its face.

DUNCAN, J., concurs in the foregoing dissenting opinion.

JUDGMENT, ORDER OR DECISION IN QUESTION

Final Order, Ohio Supreme Court

THE SUPREME COURT OF THE STATE OF OHIO

1970 TERM

To wit: January 28, 1970

Nos. 69-116, 69-117, 69-118, 69-119 and 69-120

THE STATE OF OHIO,
City of Columbus.

CITY OF CINCINNATI,
Plaintiff-Appellee,

vs.

DENNIS COATES,
JAMES HASTINGS,
WENDELL SAYLOR,
ARNOLD ADAMS, and
CLIFFORD WYNER,
Defendants-Appellants.

APPEALS FROM THE COURT OF APPEALS
for HAMILTON *County*

These causes, here on appeals from the Court of Appeals for Hamilton County, were heard in the manner

prescribed by law. On consideration thereof, the judgments of the Court of Appeals are affirmed; for the reasons set forth in the opinion rendered herein, and it appearing that there were reasonable grounds for this appeal, it is ordered that no penalty be assessed herein.

It is further ordered that the appellee recover from the appellant its costs herein expended; that a mandate be sent to the CINCINNATI MUNICIPAL COURT to carry this judgment into execution; and that a copy of this entry be certified to the Clerk of the Court of Appeals for HAMILTON County for entry.

I, Thomas L. Startzman, Clerk of the Supreme Court of Ohio, certify that the foregoing entry was correctly copied from the Journal of this Court.

Witness my hand and the seal of the Court this 28 day of January 1970.

/s/ .....Clerk
/s/ .....Deputy

OTHER PARTS OF THE RECORD

Transcript re: Coates

HAMILTON COUNTY MUNICIPAL COURT

STATE OF OHIO

(TITLE OMITTED)

BILL OF EXCEPTIONS

BE IT REMEMBERED that upon the trial of this cause commencing on March 27, 1968 before the Honorable Rupert A. Doan and continuing on March 29, 1968 before the Honorable Joseph A. Luebbers, Judges of the Hamilton County Municipal Court, the following proceedings were had:

APPEARANCES:

On behalf of Plaintiff:

Norbert A. Nadel, Esq.
Assistant City Prosecutor
(Hearing March 27, 1968)

A. David Nichols, Esq.
Assistant City Prosecutor
(Hearing March 29, 1968)

On behalf of Defendant:

Bernard C. Fox, Esq.
of
Beckman, Lavercombe, Fox & Weil

[2] MARCH 27, 1968
10:30 A.M.

MR. NADEL: This is City of Cincinnati vs. Dennis Coates and all witnesses, Your Honor.

THE COURT: As I understand, you are not ready to proceed to trial?

MR. NADEL: That's right.

THE COURT: But Mr. Fox has matters to present to the Court?

MR. NADEL: That is correct, Your Honor.

THE COURT: That we will consider now. All right.

MR. FOX: First off, I'd like to make an oral motion to dismiss on the basis that the ordinance in question violates the First Amendment of the United States Constitution, and Section 3, Article I of the Ohio Constitution, Due Process, and the Fourteenth Amendment of the United States Constitution. I'll just briefly give you a couple of cases that I have.

(Argument by Mr. Fox and Mr. Nadel, and the Court then took the motion to dismiss under submission pending handing down of a ruling in a similar case now pending before an appeal court.)

MR. FOX: I'd like to file a motion to quash [3] also which raises a different point, and maybe I'm the eternal optimist; maybe the Court will rule in my favor on this. We are moving to quash on the basis that the affidavit doesn't charge any violation of any ordinance of the City of Cincinnati, whether it's constitutional or otherwise (handing document to the Court.)

(Counsel for defendant discussed the motion to quash with the Court, following which the Court overruled the motion.)

MR. FOX: If I can bother you once more, I'll file a demurrer because I'm never sure which you should file,

a motion to quash or a demurrer (handing document to Court.)

(Counsel for defendant discussed the demurrer with the Court, following which the Court overruled the demurrer.)

THE COURT: Then, as I understand it, Friday we will proceed with the testimony, proceed with the trial, and we will withhold the matter of your motion and withhold the matter of the decision, if it should get to that point, the decision on the merits of the case.

(Thereupon the trial was adjourned until Friday, March 29, 1968, at 9:00 A.M.)

[4] And thereafter, on FRIDAY, MARCH 29, 1968, before the HONORABLE JOSEPH A. LUEBBERS, one of the Judges of the Cincinnati Municipal Court, the above-captioned matter came on for trial on the affidavit of Officer Thomas J. Martin, charging violation of Section 901-L6 of the Ordinance of the City of Cincinnati.

APPEARANCES:

On behalf of Plaintiff:
A. David Nichols, Esq.
Assistant City Prosecutor

On behalf of Defendant:
Bernard J. Fox, Esq.
of
Beckman, Lavercombe, Fox & Weil

THE COURT: Do I understand this is a short case, Mr. Fox?

MR. FOX: That's what I am told.

THE COURT: We usually take those at the end of the

docket, so will do that this morning, to be sure, because we have some other matters.

MR. FOX: No dispute over the facts, as far as I know.

THE COURT: How many witnesses?

[5] MR. FOX: I have only one defendant; I doubt I will call him, unless something surprises me.

MR. NICHOLS: We have four witnesses.

MR. FOX: I assume they will be substantially the same.

THE COURT: Let's proceed.

MR. NICHOLS: What is the plea?

MR. FOX: I am going to renew my motion, I think I will renew them, just briefly.

THE COURT: What is the charge here?

MR. NICHOLS: Charge under 901-L6, loitering section of the City Ordinances.

MR. FOX: Before proceeding with the testimony, I want to renew first my motion to dismiss, on the grounds that the ordinance itself is unconstitutional, violates the Fourteenth Amendment and the First Amendment to the United States Constitution and the Ohio Constitution, Section 2 of Article III.

I am not going to argue the question before the Court, in view of the Lathan Johnson case I would suggest this motion be taken under submission until that's decided; they are going to argue that within a matter of a couple of weeks.

MR. NICHOLS: In fact, the specific motions on this specific case, as set out by Mr. Fox, I understand have [6] already been before Judge Doan of the Municipal Court; is that right?

MR. FOX: That's right.

MR. NICHOLS: Therefore I think the motions should

be in abeyance at this time inasmuch as he already has the jurisdiction.

THE COURT: The motion in this case?

MR. NICHOLS: Yes.

MR. FOX: He has not decided it, so I want to renew it.

THE COURT: He has not ruled on the motion?

MR. FOX: He said he would hold it in abeyance until the Court of Appeals decides. I suggest we do the same.

THE COURT: We will do the same.

MR. FOX: I also filed a motion to quash on the basis the affidavit does not state a crime. The particular statute involved prescribes assembling with three or more persons, and the affidavit says that Coates did unlawfully loiter on the sidewalk. Now, loitering and assembling are not synonomous.

(Argument by Mr. Fox)

THE COURT: What do you have to say, Mr. Nichols?

[7] MR. NICHOLS: Your Honor, with regard to the motion to quash, I believe that was also before Judge Doan in this same manner. At that time I believe it was overruled, Your Honor.

MR. FOX: I think that's right.

THE COURT: Let's see the affidavit. (The Court examined the affidavit.)

MR. NICHOLS: I would say, Your Honor, inasmuch as the motion has been before one member of the Municipal Bench, that he has already ruled, that brings to conclusion the question, and it is a final order. Under the circumstances, the question in this case from which Mr. Fox on behalf of the defendant may appeal therefore is moot, as appears now, other than for his purposes for the record.

MR. FOX: I just want to be sure it is in.

THE COURT: I presume it is made for the purpose of the record. Based on that, I don't think I have to rule on it at all, it's been ruled on.

MR. FOX: I want to be sure.

THE COURT: All right. Well, so then it's already been overruled.

MR. NICHOLS: If I may, Your Honor, is this not a correct statement, Mr. Fox — that the motions have already been ruled on?

[8] MR. FOX: Yes, there is no question about that. I never know what is going to happen in the Court of Appeals, and we will raise it here, they may say I should have.

THE COURT: For the purpose of the record, let the record show in the previous hearing this motion was overruled.

MR. FOX: That's all the motions I have.

THE COURT: All right.

MR. FOX: Is it my understanding, Your Honor, you are following this determination by Judge Doan and in all previous matters in regard to the motion?

THE COURT: That's right, exactly right.

MR. NICHOLS: What is the plea?

MR. FOX: Not guilty.

THE COURT: Not guilty. Raise your right hands to be sworn.

(All witnesses sworn.)

THE COURT: Is there a jury waiver?

MR. FOX: Yes, I have one (handing jury waiver to the Court.)

THE COURT: All right, Mr. Coates, you want the jury waived, and you want the case to be heard here by the Court, is that correct?

THE DEFENDANT: Yes.

(Testimony offered on behalf of plaintiff.)

[9] THE COURT: You have evidence?

(Argument by Mr. Fox and by Mr. Nichols.)

THE COURT: The finding of the Court is guilty. Ever been arrested before?

THE DEFENDANT: No.

THE COURT: What do you do?

THE DEFENDANT: I am a student.

(Further questioning by the Court.)

THE COURT: Anything further, Counselor?

MR. FOX: How is the Court going to proceed? Are you going to overrule the motion to dismiss or are you going to hold the whole thing in abeyance and come back for sentence? It might be just as well to overrule it even though it is submitted to Judge Doan, to overrule our new motion to dismiss, get the sentencing and everything out of the way. We are going to appeal.

THE COURT: I think that might be the —

MR. FOX: Rather than come back and forth.

THE COURT: As long as you are going to, I think that's the better way, too, otherwise it is just going to delay it and muddy up the waters.

MR. FOX: Let me say something further about Mr. Coates. (Statement of Mr. Fox)

THE COURT: The Court feels that there is no [10] objection to demonstration as long as it confines itself within the scope of the law, and this did not.

MR. FOX: Well, I agree it might violate some of these, but not the one —

THE COURT: It is the sentence of the Court $50.00 and costs, one year's probationary, informal probationary period. Any kind of difficulty within the year would be violation of your probation, it means you come back here and be subject to thirty days in the workhouse.

MR. FOX: May we have a stay at this time?
THE COURT: How long do you need? Thirty days?
MR. FOX: I guess that gives me enough time.
THE COURT: The 29th — same bond.

AND THE FOREGOING WAS ALL OF THE PROCEEDINGS RELATIVE TO THE MOTIONS OF THE DEFENDANT PRESENTED AT THE HEARINGS OF THE WITHIN CAUSE.

(CERTIFICATE OMITTED)

STATE OF OHIO

HAMILTON COUNTY MUNICIPAL COURT

(TITLE OMITTED)

BILL OF EXCEPTIONS

BE IT REMEMBERED that on Tuesday, April 23, 1968, at 9:45 A.M., before the Honorable Joseph A. Luebbers, one of the Judges of the Hamilton County Municipal Court, the above-captioned cases came on for trial.

APPEARANCES:

On behalf of Plaintiff:
Wallace Holzman, Esq.
Assistant City Prosecutor

On behalf of Defendants:
Bernard C. Fox, Esq.
of
Beckman, Lavercombe, Fox & Weil

[2] MR. HOLZMAN: There is a jury waiver and withdrawal of demand for jury, and all of the defendants have been advised of their constitutional rights, but they have decided to waive their rights to trial by jury and have the Court hear the facts and determine the issues of law. Mr. Fox, what is the plea?

MR. FOX: I will make a motion first, to dismiss. I want to raise the constitutionality of the ordinance. I have argued it to the Court before, Your Honor; it is on appeal and will be argued in the Court of Appeals in June,

and I don't think it is necessary for me to cite the usual authorities and all that.

THE COURT: No; they may be added in the record, if you would like. The motion will be overruled.

MR. FOX: The plea is not guilty.

MR. HOLZMAN: The plea is not guilty. Will all witnesses please come forward and be sworn.

(Thereupon the plaintiff presented its evidence.)

MR. HOLZMAN: We rest, Your Honor.

MR. FOX: I move to dismiss.

(Argument by Mr. Fox in support of motion and by Mr. Holzman in opposition to motion.)

THE COURT: The motion will be overruled.

(Thereupon the defendants presented their evidence.)

[3] MR. HOLZMAN: I will waive opening or closing argument.

(Further argument by Mr. Fox and Mr. Holzman.)

THE COURT: It is true in picketing probably that could be annoying to some people along the way, and in all probability it is, but that in itself does not bring it within the scope of any of the ordinances, because it happens to annoy someone. However, when you are blocking either an occupant of the building or someone trying to get in, that's a different situation, and if they ask you to move and say "Don't block the truck," then, of course, you should move and continue your picketing after the truck has either entered or departed.

The finding of the Court is guilty. Costs on each.

MR. FOX: May we have a stay?

THE COURT: Sure.

MR. FOX: Thirty days?

THE COURT: All right.

MR. FOX: I think there is a bond here.

THE COURT: 5/23, same bond, if there is one. Is there a bond?

MR. FOX: I think there is.

MR. HOLZMAN: Yes.

[4] THE COURT: I think they are O.R.s. All members of the community, all living in the city?

MR. FOX: Yes.

THE COURT: O.R. No bond. Costs remitted on all except Hastings.

AND THE FOREGOING WAS ALL OF THE PROCEEDINGS RELATIVE TO THE MOTIONS OF THE DEFENDANTS PRESENTED AT THE HEARINGS OF THE WITHIN CAUSE.

(CERTIFICATE OMITTED)

Supreme Court of the United States

No. 1370 --- , *October Term, 19* 69

Dennis Coates, et al.,

Appellants,

v.

City of Cincinnati

APPEAL from the Supreme Court of the State of Ohio.

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted and the case is placed on the summary calendar.

May 18, 1970